95-1082

Supreme Court, U.S.
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No. 95-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

NIPPON CARBIDE INDUSTRIES CO., INC.,
Petitioner,

v.

MINNESOTA MINING & MANUFACTURING CO., INC.,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether a court, in determining whether jurisdiction may be constitutionally asserted against a foreign defendant, must, in addition to finding "minimum contacts," perform a distinct reasonableness inquiry employing the factors set forth by *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) and *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102 (1987).

(2) Whether the exercise of personal jurisdiction in this patent infringement and contract case violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution when the only contact of the defendant with the forum state was for the purpose of a single contract negotiating session, the case is governed primarily by foreign law, and the activity alleged to create liability occurred entirely outside the United States.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the United States Court of Appeals for the Eighth Circuit were petitioner Nippon Carbide Industries Co., Inc., ("NCI"), and respondent Minnesota Mining and Manufacturing Company ("3M"). No other party appeared in any proceeding below.

Pursuant to Supreme Court Rule 29.6, petitioner states that it has no parent companies, although approximately 35% of its stock is owned by companies affiliated with the Mitsubishi group of Japan. The following list names petitioner's subsidiaries (except wholly owned subsidiaries), as translated or transliterated into English:

DEC Research Center Inc.
Electro-Ceramics (Thailand) Co., Ltd.
Electronics Technology Incorporated
Hokuriku Ceramics Co., Ltd.
Kabushiki Kaisha Hokushoku
Kabushiki Kaisha Vinikkus Tokyo
Kuriekkus Kabushiki Kaisha
NCI Electronics Co., Ltd.
Nikka Kenzai Kabushiki Kaisha
P.T. Alviny, Indonesia
Ribarsaido Gorufu Kabushiki Kaisha
Shinwa Housing Kabushiki Kaisha
Techno-Integration Co., Inc.
Uozu Sangyo Kabushiki Kaisha
VINY Frame Co., Ltd.
Yuho Setsubi Kabushiki Kaisha

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Daniel J. Hartwig Assocs., Inc. v. Kanner, 913 F.2d 1213 (7th Cir. 1990) 21
Dehmlow v. Austin Fireworks, 963 F.2d 941 (7th Cir. 1992) 20
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Milliken v. Meyer, 311 U.S. 457 (1940) 7
National City Bank of Minneapolis v. Ceresota Mill Ltd. Partnership, 488 N.W.2d 248 (Minn. 1992) 18

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Northrup King v. Compania Productora Semillas Algodoneras Selectas, S.A., 51 F.3d 1383 (8th Cir. 1995) 12, 17
Nucor Corp. v. Aceros Y Maquilas De Occidente, S.A., 28 F.3d 572 (7th Cir. 1994) 20
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Watson v. Graf Bae Farm, Inc., 392 S.E.2d 651 (N.C. Ct. App. 1990) 18
Wilson v. Humphreys (Cayman) Ltd., 916 F.2d 1239 (7th Cir. 1990), *cert. denied*, 449 U.S. 947 (1991) 20
World-Wide Volkswagen Corp. v. Woodson, 44 U.S. 286 (1980) 8, 9, 12
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Miscellaneous Authority

1 Robert C. Casad, *Jurisdiction in Civil Actions* § 2.04[2][e] (1991) 14

Mona A. Lee, *Burger King's Bifurcated Test For Personal Jurisdiction*, 66 Temp. L. Rev. 945 (1993) 16

Earl M. Maltz, *Unraveling The Conundrum of the Law of Personal Jurisdiction: A Comment on Asahi Metal Industry Co. v. Superior Court of California*, 1987 Duke L.J. 669 . . . . . 7, 21

Howard B. Stravitz, *Sayonara to Minimum Contacts: Asahi Metal Industry Co. v. Superior Court*, 39 S.C. L. Rev. 729 (1988) 21

Russell J. Weintraub, *Asahi Sends Personal Jurisdiction Down the Tubes*, 23 Tex. Int'l L.J. 55 (1988) 21

4 Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure*, (1987) 16, 21

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PETITION FOR A WRIT OF CERTIORARI

Nippon Carbide Industries Co., Inc. ("NCI") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The order of the Court of Appeals denying the petition for rehearing and suggestion for rehearing en banc is unreported and appears at page 9a of the appendix to this petition. The opinion of the Court of Appeals is reported at 63 F.3d 694 (8th Cir. 1995) and is reprinted at pages 1a to 8a of the appendix to this petition. The order of the trial court granting petitioner's motion to dismiss for lack of personal jurisdiction is unreported and appears at page 10a of the appendix to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on August 11, 1995. A petition for panel rehearing and a suggestion for rehearing *en banc* were both denied on October 11, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. XIV, § 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case presents an important issue of personal jurisdiction under the Due Process Clause of the 14th Amendment: whether, in exercising personal jurisdiction over a defendant, federal and state courts must make an independent determination that the exercise of personal jurisdiction is "reasonable" in addition to finding "minimum contacts." The lower federal and state courts are sharply divided on this question. Contrary to the decisions of several other circuits, the Eighth Circuit, as reflected in its decision in this case, holds that it is not required to make a separate reasonableness inquiry under the Due Process Clause.

1. The Underlying Dispute

Respondent 3M, through one of its employees, Joseph McGrath, developed a cellular retroreflective sheeting. App. 2a. That sheeting is primarily used on street signs to retroreflect light without distracting the driver. *Id.* 3M applied for and received a United States patent for the invention. *Id.* Furthermore, 3M

applied for and received similar patents from eleven foreign countries. *Id.* These patents have been referred to as the "McGrath patents" throughout the course of this dispute. *Id.*

In the late 1980s, 3M sued Seibu Polymer Chemical Industry Co., Ltd. ("Seibu") in France, Australia, Canada, the Republic of China, the United Kingdom and the United States, alleging an infringement of the McGrath patents by a Seibu retroreflective product known as Ultralite Grade (ULG).[1] App. 2a. In 1991 petitioner NCI acquired the reflective sheeting assets of Seibu. *Id.* NCI is a Japanese company, not affiliated with Seibu, having its headquarters in Tokyo. NCI does not do business in Minnesota, the forum state in this controversy. *Id.*

Following the acquisition, 3M notified NCI of the ongoing dispute over the patents. App. 2a. 3M and NCI held a series of settlement meetings to resolve the dispute. *Id.* Two meetings were held in Tokyo and one each in Honolulu and Los Angeles. *Id.* One meeting was held in St. Paul, Minnesota, the forum state. *Id.* An agreement was eventually reached in 1992. The contract was signed by NCI in Tokyo and by 3M in St. Paul in April, 1992. App. 3a.

By the terms of the agreement, NCI agreed not to make, use or sell retroreflective sheeting covered by the McGrath patents in any of the twelve countries in which 3M had an unexpired McGrath patent. App. 3a n.2. NCI also specifically agreed not to make, use or sell ULG Sheeting. *Id.* 3M agreed to drop its then-pending litigation claims against NCI. *Id.*

Following the execution of the agreement, NCI developed a new retroreflective sheeting product called Nikkalite Ultralite Special Grade Sheeting ("ULS"), which it believed was not covered by the McGrath patents. App. 3a. NCI recognized that 3M might claim that ULS was covered by the prior agreement

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[1] 3M also sued another company, Seibulite International, Inc. in the original ULG dispute.

and contacted 3M in September 1992 to discuss whether or not ULS fell under the terms of that agreement. *Id.*

2. The District Court's Decision

Following a breakdown in negotiations, 3M filed suit against NCI in the United States District Court for the District of Minnesota, invoking alienage jurisdiction under 28 U.S.C. § 1332(a)(2). App. 3a-4a. 3M claimed in Count I of the complaint that NCI breached the 1992 settlement agreement by continuing to make and sell ULG sheeting "throughout the world, including at least in the countries of France, Italy, and Germany where 3M owns unexpired equivalents to the McGrath Patent." Complaint (3/7/1994) at 4. NCI disputes the validity of the McGrath patents under those countries' patent laws. *See* NCI's Memorandum In Support Of Its Motion To Dismiss (7/15/94) at 16. Moreover, NCI has maintained that the parties orally agreed that NCI would be allowed to dispose of its excess ULG sheeting. App. 3a.

Count II alleged that NCI had violated the contract by committing patent infringement by making, using and selling the new product, ULS sheeting, "throughout the world, including at least in the countries of France, Germany, and Japan." Complaint at 5. 3M claimed to have unexpired McGrath patents in France, Germany, and Japan and that the ULS product is Covered Retroreflective Sheeting within the meaning of the April 1992 agreement. *Id.* NCI has maintained that the accused sheeting is not covered by the McGrath patents in France, Germany, Italy, and Japan and that 3M's McGrath patents are not valid under the various countries' patent laws. *See* NCI's Memorandum In Support Of Its Motion To Dismiss (7/15/94) at 16.

3M did not allege, in either Count, that NCI has done anything in the forum state or elsewhere in the United States in breach of the agreement or in violation of United States patent laws.[2]

The district court granted NCI's motion to dismiss for lack of personal jurisdiction on the ground that the "assertion of personal jurisdiction under these circumstances would offend due process." (8/12/94 Tr. at 30). The court characterized the underlying controversy as a "global and an international dispute" and as "involving nations all over the earth." (Tr. 31-32). The court noted that NCI did not "attempt to transact business or gain any benefit in [Minnesota]." (Tr. 32). The court concluded that "the nature and the quality of NCI's contacts with Minnesota [were] insufficient to support the exercise of personal jurisdiction." (Tr. 33).

In accordance with established Eighth Circuit precedent, the district court also briefly discussed two "secondary" jurisdictional considerations: the convenience to the parties and the interests of Minnesota. The district court determined that Minnesota maintained an interest in adjudicating the dispute by virtue of the residence of plaintiff 3M. The district court concluded, however, that the predominance of foreign law in this case equally balanced that interest. (Tr. 34). As to the convenience factor, the court determined that NCI's inconvenience with having to litigate in Minnesota was balanced equally by 3M's potential inconvenience with having to litigate overseas. (Tr. 34-35).

3. The Eighth Circuit's Decision

On 3M's appeal, the Eighth Circuit reversed. Following its firmly-established formulation as stated in *Bell Paper Box, Inc. v. U.S. Kids, Inc.*, 22 F.3d 816, 819 (8th Cir. 1994) and *Thompson v. Ecological Science Corp.*, 421 F.2d 467, 469 (8th Cir. 1970), the Eighth Circuit applied a five-factor test to determine whether

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[2] *See* Aff. of Roger R. Tamte (3M Legal Counsel) ¶ 17, at 6.

the assertion of jurisdiction comported with the requirements of the Fourteenth Amendment. App. 5a-6a. The court focused on the first three factors, which constitute a "minimum contacts" analysis: (1) the nature and quality of the contacts with the forum state; (2) the quantity of those contacts; and (3) the relation of the cause of action to the contacts. The panel concluded that NCI had "purposefully availed itself of the privilege of conducting activities within the forum and has made a contract in that forum." App. 8a.

The court, having determined that minimum contacts existed, did not conduct a separate reasonableness inquiry under this Court's decisions in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), and *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102 (1987). In those cases this Court concluded that a separate reasonableness inquiry was required and articulated the factors to be considered. *Asahi* found an exercise of jurisdiction to be unreasonable even though minimum contacts were present. Contrary to the requirement of *Asahi* and *Burger King*, the Eighth Circuit failed to consider "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" and the "shared interest of the several States in furthering fundamental substantive social policies." *Id.* at 113. The court below failed to recognize that these two factors are especially pertinent where an alien defendant and a foreign dispute are involved.

The Eighth Circuit also found it "unnecessary to discuss," App. 8a, the last two factors of the Eighth Circuit's own standard jurisdictional analysis, the "interest of the forum state in the litigation and the convenience or inconvenience to the parties," stating they are only "secondary" despite this court's holding in *Burger King* and *Asahi* that they are pertinent. App. 5a-6a. The court below stated that it agreed with the district court that these two factors were "evenly balanced." App. 8a. The court, however, indicated that these two factors might become "relevant" on remand on the question of *forum non conveniens*. *Id.*

REASONS FOR GRANTING THE WRIT

By failing to separately determine whether it was "reasonable" to assert jurisdiction against NCI, the court of appeals' decision directly conflicts with the decisions of this Court, and with other courts of appeals. This conflict in this important area of personal jurisdiction is significant and merits this Court's review.

I. THE DECISION BELOW CONFLICTS WITH *BURGER KING* AND *ASAHI* BY REFUSING TO CONDUCT A SEPARATE REASONABLENESS ANALYSIS.

A. This Court's Decisions in *Burger King* and *Asahi* Require A Separate Reasonableness Inquiry Even Where Minimum Contacts Have Been Established.

Before a state court or a federal court sitting in diversity can assert personal jurisdiction over a defendant, it must determine whether the assertion of that jurisdiction comports with the requirements of the Due Process Clause of the 14th Amendment.

The starting point is this Court's decision in *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), which announced that the requirement of due process is satisfied if a defendant possesses "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Whether a court must perform a distinct two-part test when assessing personal jurisdiction, including a separate reasonableness inquiry that could potentially trump the minimum contacts determination, has been a question since *International Shoe*.[3]

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[3] *Compare Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 945 (4th Cir. 1994) (asserting that *International Shoe* stated a two-pronged test consisting of a minimum contacts and a fairness analysis that was "further articulated" by later Supreme Court cases), *cert. denied*, 115 S. Ct. 1103 (1995), *with* Earl M. Maltz, *Unraveling The Conundrum of the Law of Personal Jurisdiction: A Comment on Asahi Metal Industry Co. v. Superior Court of California*, 1987 Duke L.J. 669, 680 (stating that

Before this Court's decision in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), the personal jurisdiction cases in this Court focused on the specific conduct by the defendant directed toward the forum and not on reasonableness issues. *See, e.g., Hanson v. Denckla*, 357 U.S. 235 (1958). Indeed, this Court's decision in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), was read as implying that "minimum contacts" was the only relevant analysis: "[a]s has long been settled, and as we reaffirm today, a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State." *Id.* at 291; *see also Keeton v. Hustler*, 465 U.S. 770, 778 (1984) (potential "unfairness" of applying forum law "has nothing to do with the jurisdiction of the court to adjudicate the claims").

This Court signalled a transformation of doctrine in *Burger King*. In *Burger King*, this Court began by acknowledging that the "constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum State." 471 U.S. at 474. The Court, however, continued that "[o]nce it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" *Id.* at 476. A defendant found to have purposefully directed activities to the forum could show that jurisdiction was still unreasonable by presenting "a compelling case." *Id.* at 477.

While the Court plainly contemplated two separate inquiries, uncertainty remained in view of the Court's determination that the minimum contacts could "be considered in light of" the additional reasonableness factors.

Asahi fundamentally shifted the role of minimum contacts from a sufficient jurisdictional condition to merely a necessary condition subject to the separate reasonableness analysis).

This Court reaffirmed that a separate reasonableness inquiry was required in *Asahi Metal Ind. Co. v. Superior Court*, 480 U.S. 102 (1987), which, like the current case, involved an alien defendant and an international dispute. In *Asahi*, a Taiwanese company, which had been sued in a products liability case in a California state court, cross-claimed for indemnity against a Japanese manufacturer, Asahi Metal Industry Co., Ltd. Asahi argued that the California court could not assert personal jurisdiction over it.

This Court unanimously agreed, issuing three separate opinions. Part II-B of the Court's opinion, joined by eight Justices, determined that the exercise of jurisdiction would be unreasonable based upon the following factors:

> [1] the burden on the defendant, [2] the interests of the forum State, [3] the plaintiff's interest in obtaining relief, . . . [4] "the interstate judicial systems's interest in obtaining the most efficient resolution of controversies," and [5] the "shared interest of the several States in furthering fundamental substantive social policies."

Id. at 113 (quoting *World-Wide Volkswagen*, 444 U.S. at 292); *Burger King*, 471 U.S. at 477.

Specifically, the Court determined that where a foreign defendant is involved, a court must give "significant weight" to "the unique burdens placed upon one who must defend oneself in a foreign legal system." *Id.* at 114. The Court found that the foreign plaintiff and the forum state of California had minimal interests in resolving the case in California. The Court emphasized that courts must consider the "procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by the [forum] court" when an alien defendant is involved. *Id.* at 115. Considering all of these factors, the Court concluded that the assertion of jurisdiction would be unreasonable.

Four Justices concluded that jurisdiction was unreasonable even though they found that the minimum contacts requirement

had been satisfied. *See id.* at 116 (Brennan, J., joined by White, Marshall and Blackmun, JJ., concurring in part and concurring in the judgment). A fifth Justice concluded that it was not even necessary to reach the minimum contacts analysis once unreasonableness was found. *Id.* at 121-22 (Stevens, J., joined by White and Blackmun, JJ., concurring in part and concurring in the judgment).[4] Thus, though *Asahi* produced three separate opinions, a majority of the Court agreed not only that a separate reasonableness inquiry using the five factors from *Burger King* must be performed, but also that this separate requirement can lead to a rejection of jurisdiction even where minimum contacts are present.

The Eighth Circuit's decision in this case directly conflicts with *Burger King* and *Asahi*. In accordance with established Eighth Circuit precedent[5] the court of appeals conducted its own five-factor test on the question of jurisdiction beginning with "(1) the nature and quality of the contacts, (2) the quantity of the contacts, and (3) the relation of the cause of action to the contacts." App. 5a. The final two factors, deemed "secondary" were "[4] the interest of the forum state in the litigation and [5] the convenience or inconvenience to the parties." App. 5a-6a.

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[4] Four Justices, including three who concluded that jurisdiction was unreasonable, concluded that minimum contacts were not present. 480 U.S. at 109-16 (Opinion of O'Connor, J., joined by Rehnquist, C.J. and Powell and Scalia, JJ.).

[5] The five-factor test in the Eighth Circuit is deeply entrenched and traces back to caselaw predating the 1985 decision in *Burger King*. *See, e.g.*, *Land-O-Nod Co. v. Bassett Furniture Indus.*, 708 F.2d 1338, 1340 (8th Cir. 1983); *Aaron Ferer & Sons Co. v. Diversified Metals Corp.*, 564 F.2d 1211, 1215 (8th Cir. 1977); *Aftanase v. Economy Baler Co.*, 343 F.2d 187, 197 (8th Cir. 1965). The Eighth Circuit has continued to follow it without change after *Asahi*. The labeling of the final two factors as "secondary" traces back at least to *Thompson v. Ecological Science Corp.*, 421 F.2d 467, 469 (8th Cir. 1970).

The analysis under the first three factors is essentially the traditional minimum contacts analysis, leading to the court's conclusion based on those factors that NCI had "purposefully availed itself of the privilege of conducting activities" within Minnesota. App. 8a. Importantly, while the panel specifically mentioned and cited *Burger King*, it did not conduct a separate reasonableness inquiry. App. 5a.

As a result, the court did not consider at all the final two *Asahi* factors, "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies," which *Asahi* held merited "careful inquiry" in international cases. 480 U.S. at 115. The final two factors in the Eighth Circuit's test, which appear to be similar to the first three factors in *Asahi*, were deemed "secondary" and were not even discussed by the court of appeals. The court of appeals summarily agreed with the district court that these secondary factors were evenly balanced and would be relevant on remand, but only for a *forum non conveniens* analysis. By labelling its final two factors as "secondary," the Eighth Circuit apparently concluded that, once there has been a finding of minimum contacts, a defendant cannot establish unreasonableness of jurisdiction, much less secure the "careful inquiry" that *Asahi* mandates.

In *Falkirk Mining Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 376 (8th Cir. 1990), the Eighth Circuit appeared to recognize that its five-part test did not consider all of the *Burger King* reasonableness factors when it noted that the final two *Asahi* factors are "not embodied" in that test. A later Eighth Circuit decision, *Barone v. Rich Bros. Interstate Display Fireworks*, 25 F.3d 610 (8th Cir.), *cert. denied sub nom. Hosoya Fireworks Co. v. Barone*, 115 S. Ct. 359 (1994), dismissed *Asahi* as a case that stands for no more than that a dispute between two foreign companies should not be adjudicated in the United States absent the defendant's consent rather than as setting forth a definitive reasonableness test for all jurisdictional questions. *Barone*, 25 F.3d at 614.

Other Eighth Circuit cases, including the current case, confirm that the Eighth Circuit does not interpret *Burger King* and *Asahi* as requiring a separate reasonableness inquiry. *See, e.g., Northrup King v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1387-88 (8th Cir. 1995) (applying five-factor test in case involving Spanish corporate defendant); *Bell Paper Box, Inc. v. U.S. Kids, Inc.*, 22 F.3d 816, 819 (8th Cir. 1994); *Gould v. P.T. Krakatau Steel*, 957 F.2d 573, 576 (8th Cir. 1992) (applying the five-factor test to a case involving an Indonesian corporate defendant), *cert. denied*, 113 S. Ct. 304 (1992).

The decision below directly conflicts with *Burger King* and *Asahi*, and warrants review by this Court.

B. The Exercise Of Jurisdiction In This Case Is Clearly Unreasonable Under The Appropriate Reasonableness Inquiry.

The five reasonableness factors established by *Burger King* and *Asahi*, which the court of appeals should have examined are: "[1] the burden on the defendant, [2] the interests of the forum State, and [3] the plaintiff's interest in obtaining relief[,] . . . [4] 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and [5] the shared interest of the several States in furthering fundamental substantive social policies.'" *Asahi*, 480 U.S. at 113 (quoting *World-Wide Volkswagen*, 444 U.S. at 292). Under these factors, the exercise of personal jurisdiction in this case would clearly have been unreasonable.

1. Burden on the defendant

Asahi, like the current case, concerned an alien defendant and an underlying dispute concerning activity solely in foreign countries. The Court noted, under the first factor, that the "unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." 480 U.S. at 114. As the

court of appeals found here, NCI is a Japanese company with its principal place of business in Japan. It does not have an office, a mailing address and is not licensed to do, and does not do, business in the state of Minnesota. It has no employees working in Minnesota nor does in own property or a bank account in Minnesota. App. 4a. As in *Asahi*, the burden on NCI would be severe.

2. Interests of the forum state

The interests of Minnesota in this case are insignificant. While 3M is a Minnesota company which signed the agreement at its corporate office, the essence of this dispute has nothing to do with Minnesota. The negotiations of the contract occurred primarily outside Minnesota. 3M has not alleged that NCI has done anything to breach the agreement in the United States. The complaint challenges conduct in France, Germany, Italy, and Japan and makes no mention of Minnesota. While the court below suggested Minnesota law may govern the contract despite the lack of a choice of law provision, the court acknowledged that this case focuses on the validity and scope of foreign patents applied to foreign activities, raising "the complexity of foreign nations' patent laws." App. 6a.

3. Plaintiff's interest in obtaining relief

While 3M has an interest in obtaining relief, as does every plaintiff in every case, 3M's interest in a domestic forum is minimal in this dispute. 3M itself obtained the foreign patents that are in dispute in this case. 3M has no interest, other than its own convenience, in enforcing those patents in the United States as opposed to the foreign countries in which it obtained them. Moreover, 3M has shown its ability to enforce its foreign patents overseas. App. 2a. (3M sued Seibu in France, Australia,

Canada, China and the United Kingdom as well as the United States.).[6]

4 & 5. Interstate judicial system's interest in obtaining the most efficient resolution of controversies and

Shared interest of the several States in furthering fundamental substantive social policies

With respect to the final two reasonableness factors, the *Asahi* Court held that these factors carry unique significance in international disputes:

> *World-Wide Volkswagen* also admonished courts to take into consideration the interests of the "several States," . . . in the efficient judicial resolution of the dispute and the advancement of substantive policies. In [*Asahi*], this advice calls for a court to consider the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by the [forum] court. . . . In every case . . . those interests, as well as the Federal Government's interest in its foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State.

480 U.S. at 115 (citation omitted).

There is no question that the underlying dispute in this case is foreign and implicates primarily the substantive policies of foreign nations. First, under both counts of the complaint, NCI argued and the district court agreed, that the validity of the four foreign

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[6] *Cf.* 1 Robert C. Casad, *Jurisdiction in Civil Actions* §2.04[2][e], at 2-79 (1991) (This Court has indicated "that the due process clause limitation on state court jurisdiction is directed primarily at protecting the defendant.").

patents implicated by the complaint, issued by France, Germany, Italy and Japan, will be at issue. *See* NCI memorandum in support of Motion to Dismiss at 16; NCI's Eighth Cir. Reply Br. at 23-24; *see also* Tr. 33 (determination of whether the agreement was breached "resolves and evolves into a consideration of the validity of the foreign as opposed to the United States patent."). Obviously patent validity and questions of when and under what circumstances a patent's validity may be challenged directly implicate substantive legal policies of foreign countries.

Second, even aside from the validity question, 3M's complaint on its face alleged patent infringement activity constituting a breach of the agreement through conduct occurring in foreign countries only. The adjudicating court, to decide the ULS dispute, will have to construe the foreign patent and then decide whether the ULS product is infringing. The question of whether the McGrath patents were infringed in the foreign countries is a question of foreign law.[7] *See, e.g., Stein Assocs. v. Heat & Control, Inc.*, 748 F.2d 653, 658 (Fed. Cir. 1984) ("Only a British Court, applying British law, can determine the validity and infringement of British patents.").

This case directly affects the substantive policies of foreign nations. It involves patents issued to 3M by foreign governments to regulate activities within their borders. The case necessarily involves evaluating the force of those foreign patents to cover the challenged foreign activities of NCI. Plainly, this is a case where "the procedural and substantive policies of other *nations*" may be "affected by the assertion of jurisdiction by the [forum] court." The effects of those policies should have been considered as part of a reasonableness inquiry. Yet this is exactly what the Eighth Circuit, following its established minimum contacts analysis, failed to do.

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[7] The "issue of whether the sale of new ULS sheeting breaches the Agreement is a question of patent infringement." 3M's Eighth Cir. Opening Br. at 10.

Given the overwhelming foreign nature of this dispute, the effects that the resolution of this case could have on foreign substantive patent policies, the potential interference with foreign governments' control over activities within their borders, the unique burden on the alien defendant in this case, the insignificant interest of Minnesota in this dispute, and 3M's minimal interest in resolving its foreign patent disputes in the United States, under the *Burger King* and *Asahi* test the exercise of jurisdiction in the current case is unreasonable.

II. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE A CONFLICT AMONG THE LOWER FEDERAL AND STATE COURTS AS TO THE INTERPRETATION OF *BURGER KING* AND *ASAHI*.

Certiorari also should be granted to resolve a conflict in the courts of appeals and state courts as to the meaning of *Asahi*. According to two prominent commentators, "[b]ecause the three separate opinions in the case disagreed as to whether minimum contacts had been established and why . . . the relationship of the four factors[*] to the minimum contacts test remains unclear." 4 Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* § 1073, at 451 (1987). This lack of clarity has led to a sharp conflict in the courts of appeals and state courts as to whether a separate reasonableness inquiry is required using the factors enumerated by this Court in *Burger King* and *Asahi*. *See* Mona A. Lee, *Burger King's Bifurcated Test For Personal Jurisdiction*, 66 Temp. L. Rev. 945, 953-63 (1993) (describing commentator's view of circuit approaches).

The majority of the courts of appeals — the Second, Third, Fourth, Fifth, Tenth, Eleventh and District of Columbia Circuits

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[8] Wright and Miller refer to "four factors" because they do not include "the burden on the defendant" as a reasonableness factor. 4 *Federal Practice and Procedure* § 1073 at 449-50. It is plain, however, both from *Burger King* and especially from the analysis in *Asahi* that the "burden on the defendant" is now considered by this Court to be one of the five reasonableness factors.

— interpret *Burger King* and *Asahi* as requiring a distinctive two-step analysis. Those circuits first resolve whether or not minimum contacts exist. They then apply the reasonableness factors to determine whether the exercise of jurisdiction comports with notions of fair play and substantial justice. *See, e.g., A.I. Trade Finance, Inc. v. Petra Bank*, 989 F.2d 76, 83 (2d Cir. 1993) ("[o]nce minimum contacts have been established, the reasonableness of the exercise of jurisdiction must be determined by an evaluation of several factors"); *Grand Entertainment Group, Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 483 (3d Cir. 1993) (following assessment of minimum contacts, court "must still consider, however, whether the district court's exercise of jurisdiction over the Spanish defendants squares with notions of 'fair play and substantial justice'"); *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 945-46 (4th Cir. 1994) (court employs separate reasonableness inquiry using five factors from *Burger King* and *Asahi*), *cert. denied*, 115 S. Ct. 1103 (1995); *Gulf Consol. Services v. Corinth Pipeworks, S.A.*, 898 F.2d 1071, 1074 (5th Cir.) (two-part inquiry), *cert. denied*, 498 U.S. 900 (1990); *Equifax Services, Inc. v. Hitz*, 905 F.2d 1355, 1359-60 (10th Cir. 1990) (same); *Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1551 (11th Cir. 1993) (noting that minimum contacts can be trumped by reasonableness analysis), *cert. denied sub nom. Regie Nationale Des Usines Renault S.A. v. Vermeulen*, 113 S. Ct. 2334 (1993); *Koteen v. Bermuda Cablevision, Ltd.*, 913 F.2d 973, 975 (D.C. Cir. 1990) (plaintiff must establish defendant's minimum contacts and jurisdiction "must also comport with 'traditional notions of fair play and substantial justice'").

In stark contrast to this majority of circuits, the Eighth Circuit, as discussed in detail above, does not interpret *Burger King* and *Asahi* to require a separate inquiry into whether jurisdiction is reasonable, even where foreign defendants are involved. *See, e.g., Northrup King v. Compania Productora Semillas*, 51 F.3d at 1387-88; *Gould v. P.T. Krakatau Steel*, 957 F.2d at 576.

The Eighth Circuit's approach is also followed by a number of state courts which have employed the Eighth Circuit's five-factor inquiry to jurisdictional questions and not conducted separate

reasonableness inquiries. *See, e.g., National City Bank of Minneapolis v. Ceresota Mill Ltd. Partnership*, 488 N.W.2d 248, 252-53 (Minn. 1992); *Douglas Mach. & Eng'g Co. v. Hyflow Blanking Press Corp.*, 229 N.W.2d 784, 789 (Iowa 1975); *Zerbel v. H.L. Federman & Co.*, 179 N.W.2d 872, 878-79 (Wisc. 1970), *appeal dismissed*, 402 U.S. 902 (1971); *Lee v. Goshen Rubber Co., Inc.*, 635 N.E.2d 214, 216 (Ind. Ct. App. 1994); *Capps v. Roll Service, Inc.*, 787 S.W.2d 694, 697 (Ark. Ct. App. 1990); *Watson v. Graf Bae Farm, Inc.*, 392 S.E.2d 651, 652-53 (N.C. Ct. App. 1990); *Bic, Inc., Safemark Div. v. Schleisman*, 443 N.W.2d 78, 80 (Iowa Ct. App. 1989).

There is yet a third approach taken in the First, Ninth, and Sixth Circuits. This approach does involve a reasonableness inquiry but the inquiry is not distinct from the minimum contacts analysis.

In the First Circuit, a court must initially examine whether there was purposeful availment and whether or not the cause of action is related to the defendant's forum activities. This is essentially a minimum contacts analysis. The First Circuit then turns to the *Burger King/Asahi* reasonableness factors, which it has labeled "gestalt factors." *Ticketmaster—New York, Inc. v. Alioto*, 26 F.3d 201, 209 (1st Cir. 1994). In essence, the First Circuit follows a "sliding scale" approach whereby "the weaker the plaintiff's showing on the first two prongs (relatedness and purposeful availment), the less a defendant need show in terms of unreasonableness to defeat jurisdiction." *Id.* at 210.

The Ninth Circuit has also adopted a "sliding-scale" type approach. *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1485 (9th Cir. 1993). The Ninth Circuit assesses minimum contacts, like the First Circuit, considering purposeful availment by the defendant and the relatedness of the cause of action to the defendant's forum activities.

The Ninth Circuit's reasonableness inquiry consists of seven different factors, which all must be balanced. *Roth v. Garcia*

Marquez, 942 F.2d 617, 623-25 (9th Cir. 1991). Those seven factors are:

> (1) the extent of the defendants' purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Core-Vent Corp.. 11 F.3d at 1487-88. As in the First Circuit, a strong showing of minimum contacts will increase the defendant's burden of unreasonableness. *See id.* at 1488 ("sliding scale").

In the Sixth Circuit, a plaintiff must initially show that a defendant has purposefully availed itself of forum privileges and that the cause of action has arisen from the defendant's forum activities. *Theunissen v. Matthews*, 935 F.2d 1454, 1460 (6th Cir. 1991). Next, "the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable." *LAK, Inc. v. Deer Creek Enterprises*, 885 F.2d 1293, 1299 (6th Cir. 1989), *cert. denied*, 494 U.S. 1059 (1990) (quotation and citation omitted). The Sixth Circuit has indicated, especially where a foreign defendant is involved, that the *Asahi* factors must be examined. *Theunissen*, 935 F.2d at 1461. The court has determined, however, that it will infer the reasonableness of exercising jurisdiction if a minimum contacts showing is made. *Id.* at 1461 (holding that an "inference of reasonableness arises where the first two criteria are met").

The Seventh Circuit's precedent is in disarray. Some panels have recognized that a separate reasonableness inquiry must be conducted. *See, e.g., Diamond Mortg. Corp. of Illinois v. Sugar*, 913 F.2d 1233, 1247 (7th Cir. 1990), *cert. denied*, 498 U.S.

1089 (1991).[9] In fact, one case appeared to hold that the reasonableness inquiry was the only relevant analysis.[10]

Other panels, however, have not conducted a reasonableness inquiry at all. For example, *FMC Corp. v. Varonos*, 892 F.2d 1308 (7th Cir. 1990), involved the question of whether jurisdiction could be asserted against an alien defendant. The court examined the minimum contacts issue but, though it cited *Burger King*, failed to examine the reasonableness factors. *Id.* at 1313-15. The analysis in other recent cases also suggests that minimum contacts is the only relevant inquiry in the Seventh Circuit. *Nucor Corp. v. Aceros Y Maquilas De Occidente, S.A.*, 28 F.3d 572, 579-81 (7th Cir. 1994); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1243-44 (7th Cir. 1990) (citing *Asahi* and *Burger King* but examining minimum contacts only),

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[9] *Giotis v. Apollo of the Ozarks*, 800 F.2d 660, 668 (7th Cir. 1986), *cert. denied*, 479 U.S. 1092 (1987), acknowledged that the jurisdictional inquiry is a two-part test but the court failed to cite any of the reasonableness factors. An earlier panel indicated that once a court determines that minimum contacts are present, "it *may* also consider the relative convenience of litigating in that forum and the interests of the states involved." *Heritage House Restaurants v. Continental Funding Group*, 906 F.2d 276, 284 (7th Cir. 1990) (emphasis added). Though the court cited *Burger King*, it made no mention of the other reasonableness factors.

[10] In *Dehmlow v. Austin Fireworks*, the court stated that the reasonableness inquiry was "the only standard agreed upon by a majority of the Supreme Court Justices in the Court's most recent adjudication involving personal jurisdiction." 963 F.2d 941, 945 (7th Cir. 1992) (discussing *Asahi*). The court went on to hold that the "reasonableness of jurisdiction" not only rests on the *Asahi* factors "but also on the defendant's relation to the forum state." *Id.* at 946. Thus, in some sense, the minimum contacts portion of the analysis was subsumed into the reasonableness inquiry. The strange result in this case may be explained by the fact that it specifically raised the "stream of commerce" issue, which was the minimum contacts issue that divided the *Asahi* court.

cert. denied, 499 U.S. 947 (1991); *Daniel J. Hartwig Assocs., Inc. v. Kanner*, 913 F.2d 1213, 1220 (7th Cir. 1990) (finding purposeful availment but failing to mention reasonableness); *J. Walker & Sons v. DeMert & Dougherty, Inc.*, 821 F.2d 399, 404-05 (7th Cir. 1987).

In sum, this Court should grant certiorari to clarify the hopeless confusion in the courts of appeals and state courts as to whether a reasonableness inquiry must still be made even though a foreign defendant is found to have minimum contacts to the forum.

III. THE ISSUE IS IMPORTANT AND RECURRING.

While commentators have argued that *Burger King* and *Asahi* made an important change in personal jurisdiction jurisprudence *see, e.g.*, Russell J. Weintraub, *Asahi Sends Personal Jurisdiction Down the Tubes*, 23 Tex. Int'l L.J. 55 (1988); Earl M. Maltz, *Unraveling the Conundrum of the Law of Personal Jurisdiction: A Comment on Asahi Metal Industry Co. v. Superior Court of California*, 1987 Duke L.J. 669, the federal courts have not developed a consistent approach to the reasonableness inquiry. This is attributable to confusion regarding the proper interpretation of the three *Asahi* opinions. *See, e.g.*, 4 Wright and Miller, *Federal Practice and Procedure*, § 1073 at 451; *Dow Chemical Co. v. Castro Alfaro*, 786 S.W.2d 674, 700 (Tex. 1990) (Cook, J., dissenting) ("In *Asahi*, the fair play standard acquired—and perhaps eclipsed—the force of the minimum contacts standard"), *cert. denied*, 498 U.S. 1024 (1991); Howard B. Stravitz, *Sayonara to Minimum Contacts: Asahi Metal Industry Co. v. Superior Court*, 39 S.C. L. Rev. 729, 813 (1988) ("Despite its unanimous judgment, *Asahi* demonstrates that the Court lacks harmony in resolving jurisdictional issues under the due process clause.").

Personal jurisdiction is a prerequisite before a court may proceed to a valid judgment in any lawsuit in any state or federal court. No federal court sitting in diversity and no state court can exercise personal jurisdiction unless the constitutional restrictions

of the Fourteenth Amendment are met. The above catalog of cases from the federal and state courts illustrates the continuing importance and recurrence of these issues. The lack of a uniform approach to these issues hinders business planning as foreign-based enterprises are left uncertain as to whether they must avoid establishing minimum contacts with particular states to insure that jurisdiction is not unreasonably asserted over their strictly foreign activities. Moreover, the precise contours of the reasonableness inquiry and its relationship to the minimum contacts test will become increasingly important as the character of business in this country continues to change from national to international. A uniform approach in the lower federal and state courts is essential. Only this Court, by granting certiorari, can create the necessary uniformity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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